



Scott McCallum
Governor

A Newsletter of the
DEPARTMENT OF REGULATION AND LICENSING
FOR AUCTIONEERS AND AUCTION COMPANIES

Volume 7, No. 2

October, 2002

New Board Members

Carl Theorin, CAI, is an auctioneer/owner with Wausau Sales Corp. in Wausau, WI. He was appointed by Governor Tommy Thompson to a term that will expire on May 1, 2004.

Jay Clarke is an auctioneer/owner with Clarke and Associates, LLC, in Ripon, WI. He was appointed by Governor Scott McCallum to a term that will expire on May 1, 2006.

Larry Finley is an auctioneer/owner with Larry Finley Auctioneers and Appraisers, in Ixonia, WI. Larry was appointed by Governor Scott McCallum to a term that will expire on May 1, 2006.

David Huebsch is a public member of the Board. He resides in Onalaska, WI. He was appointed by Governor Scott McCallum to a term that will expire on May 1, 2005.

THE WISCONSIN AUCTIONEER BOARD

Board Members

Richard Lust, Chair (Verona)
Marie Skic, Vice-Chair (Merrill)
Carl Theorin, Secretary (Wausau)
Jay Clarke (Ripon)
Larry Finley (Ixonia)
David Huebsch (Onalaska)
Mark Shain (Greenwood)

Administrative Staff:

Cletus J. Hansen, Division Administrator
Jacquelynn Rothstein, Legal Counsel

Executive Staff:

Oscar Herrera, Secretary
Gregory Horstman, Deputy Secretary
Myra Shelton, Executive Assistant

A Message From the Board Chair, Richard Lust

Over the last few years the Board and the Wisconsin Auctioneers Association have received complaints regarding bidding by auctioneers and sellers at their own auctions. In response to these complaints, the Board requested that Secretary Oscar Herrera appoint an advisory committee to prepare recommendations for rule changes and to submit the recommendations to the Board and Secretary Herrera. A committee was appointed and it met two times. The committee consisted of Board member, Mark Shain; Former Board member, Robert Massart; Auctioneer Scott Varney; DRL General Counsel, William Dusso; and Division Administrator, Clete Hansen.

The Auctioneer Rules Committee recommended several rule changes, which the Board discussed during two meetings. Ultimately, the Board decided not to make any rule changes. It requested, however, that this topic be placed on the agenda again several months from now. Meanwhile, it is imperative that every auctioneer read and re-read the sections from the Uniform Commercial Code that are printed elsewhere in this Digest and that have been printed since 1995 in the Auctioneer Statute and Rule Book. I would ask that you be very sensitive to the concerns of auction buyers who believe that they are not

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they are not getting a fair shake when sellers and auctioneers bid at absolute auctions. Additionally, it is even more important that you educate your sellers concerning what is and is not allowed to be done by sellers at their own auctions, including both absolute and with-reserve auctions. It is strongly recommended that any seller-bidding practices not be permitted.

Moving to another topic, I would like to express some concern about complaints I have received concerning auctioneers who enter into a contract with a seller to conduct an auction, knowing that the seller already has a contract with another auctioneer for the same services. The Board will be reviewing these contract practices at one of its meetings before the end of the year. We need input from you, the registrants, regarding such practices, and whether you think that additional rule changes are needed to address them.

Finally, the make-up of the Board has changed a lot during the last few months. The terms of some of the first Board members have expired and they are no longer with us. I would like to thank Bob Brandau, Bob Massart and Marie Kohlbeck all of their efforts on behalf of the Board. I would also like to welcome: Carl Theorin, Jay Clark, Larry Finley, as new auctioneer members, and David Huebsch, as our newest public member.

Renewal of Registration

Renewal notices will be sent to all currently-registered auctioneers and auction companies on November 1, 2002. If a registrant wishes to renew a registration and continue to practice after December 31, 2002, the registrant will have to submit the renewal application and fee to the Department by that date. A registrant may renew late; however, the registrant may not continue to practice until the registrant has actually received a renewed registration certificate. A late renewal application must be accompanied a \$25 late filing fee.

There is no continuing education requirement for this renewal. However, as you will note elsewhere in this Digest, new rules will go into effect on October 1, 2002, that will require all registered auctioneers (not auction companies) to obtain 12 hours of continuing education during 2003 or 2004, in order to timely renew at the end of 2004.

The renewal fee for auctioneers will be \$174. The fee for auction companies will be \$56.

Uniform Commercial Code

The Board suggests that you commit to memory what the following subsections of the Uniform Commercial Code have to say about absolute auctions and auctions with reserve (emphasis added):

402.328 Sale by auction. (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in the auctioneer's discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until the auctioneer announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot **cannot** be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract a bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at the

buyer's option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

History: 1991 a. 316.

Registration Statistics

Number of active registrants as of September 5, 2002:

Auctioneers - 1,044

Auction Companies - 185

New Continuing Education Requirements

The following is Chapter RL 128, Wis. Admin. Code, as amended by revisions that are effective on October 1, 2002.

Chapter RL 128

EDUCATIONAL PROGRAM

Register, September, 2002, No. 561

RL 128.01 Authority. This chapter is adopted pursuant to ss. 227.11 (2) and 480.08 (6), Stats.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96.

RL 128.015 Definitions. In this chapter:

(1) "Distance education" means the provision of educational programs or courses without an instructor or a representative of an approved school physically present with the students. "Distance education" includes the delivery of educational programs and courses on CD-ROM, videotape, computer disk, or the internet.

(2) "Hour" means a period of 50 minutes of actual instruction.

(3) "Program provider" means a provider of either a program or a course or both.

History: CR 02-030: cr. Register September 2002 No. 561, eff. 10-1-02.

RL 128.02 Education requirements prior to first renewal. (1) Except as provided in s. RL 128.06, every registered auctioneer applying to renew a registration shall complete at least 12 hours in an educational program, except that a registered auctioneer who is initially registered less than 6 months prior to the first renewal date shall complete the educational program prior to the date for the second renewal of the registration under s. 440.08 (2), Stats.

(3) A registered auctioneer may attend approved courses of one or more program providers in order to complete the courses which are part of the educational program.

(4) A registered auctioneer who acts as an instructor of an approved educational program or course shall receive credit toward satisfaction of the registered auctioneer's educational requirement. An instructor shall receive one hour of credit for each 50 minutes of instruction. The registered auctioneer may not receive credit for teaching a specific course more than one time during any biennium.

(5) The department may grant an extension of time for completion of the educational program by a registered auctioneer and the registered auctioneer may obtain a renewal registration for the extension period granted for one of the following:

(a) Health reasons which prevented attendance at the educational program or course.

(b) Active duty in the military service with assignment to a duty station outside Wisconsin.

(6) The department may either require a registered auctioneer to certify on a renewal application form that he or she has met the educational requirements when applying for renewal of the registration or the department may require a registered auctioneer to submit a certificate of completion which a registered auctioneer received from a program provider pursuant to s. RL 128.05. The department shall deny the renewal application until the certificate or certification is provided.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96; CR 02-030: am. (1) and (4), r. (2), Register September 2002 No. 561, eff. 10-1-02.

RL 128.03 Courses; examinations. (1) COURSES. The educational program shall consist of 4 courses and shall cover all of the topics under each paragraph title, be presented during no less than the number of hours stated after each paragraph title, and include:

(a) Course A: 3 hours in the Wisconsin laws relating to auctioneer ethical and professional conduct.

(b) Course B: 3 hours in the Wisconsin laws relating to maintenance of records and trust accounts.

(c) Course C: 3 hours in federal laws relating to auctioneering and Wisconsin laws other than those described in pars. (a) and (b).

(d) Course D: 3 hours in one of the following electives:

1. Real estate auctions – practice and legal requirements.

2. Commercial auctions – practice and legal requirements.

3. Agricultural auctions – practice and legal requirements.

4. Antiques, collectibles, or household auctions—practice and legal requirements.

5. Other related types of specialty auctions – practice and legal requirements.

(2) EXAMINATIONS. A program provider shall give a written examination subsequent to the completion of instruction of each course. A registered auctioneer, except a registered auctioneer who teaches a course, shall pass the examination in order to successfully complete the course. The examination shall consist of at least 5 multiple-choice questions for each hour of instruction. The program provider shall design the examination so that a person who is competent to protect the public when practicing as an auctioneer would achieve a score of 70% or more. A registered auctioneer who fails to achieve a passing score on an examination shall be permitted to retake the examination within a reasonable time as determined by the program provider. A registered auctioneer who twice fails an examination shall not be credited with having completed the course and is required to retake the course.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96; **CR 02-030: r. and recr. Register September 2002 No. 561, eff. 10-1-02.**

RL 128.04 Approval of educational programs; courses and instructors. (1) A program provider seeking initial approval from the department of an educational program or a course shall submit its application on a form provided by the department prior to the first date the program or course is offered. The program provider shall include a designation of the courses to be provided, the name and outline of the courses, the name and qualifications of the instructors, and the time segments of the courses. The department shall notify the provider whether the program or course has been approved or denied within 20 business days from the date the application is received. The department shall approve an educational program or course if the program provider submits to the department the information required by this subsection and agrees to comply with the provisions in subs. (2) to (6).

Note: Applications for educational program and course approval are available from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real

Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(1m) A program provider seeking the approval of a continuing education program or course that will be presented as distance education shall comply with sub. (1) and shall, additionally, describe to the department how the program provider will do all of the following:

(a) Ensure that instructors approved by the department under sub. (6) are available to the students at reasonable times and by reasonable means.

(b) Provide a reasonable level of examination security for the examination given at the end of each distance education continuing education course.

(c) Sufficiently cover the subjects specified for continuing education courses.

(d) Provide reasonable oversight to ensure that the students who take the examination are the enrolled students.

(e) Provide a reasonable opportunity for student self-evaluation of mastery.

Note: Applications for educational program and course approval are available from the Department of Regulation and Licensing, Office of Education and Examinations, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) The educational program and courses shall be available to all registered auctioneers regardless of membership in any organization.

(3) Program providers shall agree to monitor attendance at the beginning and end of each course and to furnish each participant an individual certificate of completion. Program providers shall retain copies of attendance records and evidence of completion of the courses by registered auctioneers for at least 5 years from the date the courses were presented.

(4) Program providers shall agree to distribute course evaluation survey forms to registered auctioneers who attend the courses offered by the providers. Program providers shall retain the originals of the completed forms for at least 12 months after the date of completion of the course and, upon request from the department, make them available to the department.

(6) Course instructors shall be approved by the department. An instructor whose auctioneer registration has been limited, suspended or revoked in Wisconsin or any other jurisdiction may not instruct in approved courses while the disciplinary action is in effect. An approved

instructor shall possess at least one of the following qualifications:

(a) Be an auctioneer registered in this state who is currently practicing auctioneering, and who has engaged in such practice for at least 5 years.

(b) Be an attorney who is engaged in the field of auctioneering-related law.

Note: Applications for approval of instructors are available from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96; **CR 02-030: am. (1), cr. (1m), r. (5), Register September 2002 No. 561, eff. 10-1-02.**

RL 128.05 Certification of completion of courses.

(1) COMPLETION REQUIREMENTS. A registered auctioneer shall attend all the required hours before the program provider may give a certificate of completion to the registered auctioneer.

(2) CERTIFICATION OF COMPLETION. Program providers shall provide an individual certificate of completion to all registered auctioneers upon satisfactory completion of courses.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96.

RL 128.06 Education examination. (1) The department shall conduct an education examination. A registered auctioneer may take the education examination conducted by the department in lieu of the educational program set forth in s. RL 128.03. A registered auctioneer who passes the education examination shall not be required to complete the educational program.

(2) The education examination shall cover the courses required for the educational program approved by the department under s. RL 128.03, and shall have no less than 5 questions for each hour of instruction in the approved education program or courses.

(3) The department shall permit a registered auctioneer to retake the education examination one time. If the registrant fails the examination a second time, the registrant shall attend an approved educational program or courses.

(4) The department shall require a minimum passing score of 70 on the education examination.

(5) The department shall permit registrants who take the education examination to review the examination and the examination results, as provided in s. RL 122.06.

(6) Passing the examination for original registration as an auctioneer under s. 480.10, Stats., does not satisfy the requirements under this section.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96.

RL 128.07 Sunset provision. Cr. Register, November, 1996, No. 491, eff. 12-1-96; **CR 02-030: r. Register September 2002 No. 561, eff. 10-1-02.**

DISCIPLINARY ACTIONS

The disciplinary summaries are taken from orders that can be reviewed on the Department of Regulation and Licensing Web site: www.drl.state.wi.us. Click on "Publications" and then "Reports of Decisions" to view the order. Decisions reported below may have an appeal pending and the discipline may be stayed. The current status of the discipline may be viewed on the Department's Web Site under "License Lookup," by calling (608) 266-2112, or by checking the progress of cases in court at: www.courts.state.wi.us.

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To check the status of a pending application:	press 1 - 2
To discuss application questions:	press 1 - 3
To discuss temporary license questions:	press 1 - 3
To renew or reinstate a permanent license:	press 1 - 4
To renew or reinstate a permanent license:	press 2 - 1
To renew a temporary license:	press 2 - 2
To obtain proof of licensure to another state:	press 3 - 1
To find out if a person is licensed:	press 3 - 2
To file a complaint on a license holder:	press 8
To check the status of complaints:	press 8
For all other licensing questions:	press 1 - 3

VERIFICATIONS

Verifications are now available online at www.drl.state.wi.us. On the Department Web site, please click on "License Lookup". If you do not use the online system, all requests for verification of licenses/credentials must be submitted in writing. There is no charge for this service. Requests should be sent to the Department address or may be faxed to (608) 261-7083 - ATTENTION: VERIFICATIONS. Requests for endorsements to other states must be made in writing - please include \$10 payable to the Department.

DID YOU KNOW THAT YOU CAN ACCESS MOST INFORMATION ON THE DEPARTMENT OF REGULATION & LICENSING WEB SITE?

Visit the Department's Web site at:

www.drl.state.wi.us

Send comments to: web@drl.state.wi.us

CHANGE OF NAME OR ADDRESS?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes is not automatically provided. **WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.**

WISCONSIN STATUTES AND CODE

Copies of the Wisconsin Statutes and Administrative Code relating to Auctioneers can be ordered through the Board Office. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition of the Code Book is dated February 2002.